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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,523	02/17/2004	Anthony Ivor Lloyd		8915

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EXAMINER	
LAYNO, BENJAMIN	
ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/779,523	LLOYD, ANTHONY IVOR	
	Examiner	Art Unit	
	Benjamin H. Layno	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-3 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-3 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102 or § 103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Moore.

The patent to Moore discloses a competitive game comprising, a deck of cards, Fig. 3. Each card having an upper face displaying four questions set one above the other. The questions are color coded to indicate the skill level required to solve each question. The "Gold" question has the greatest degree of difficulty (skill level), the "Blue" question has a lesser degree of difficulty, the "Red" question has a lesser degree of difficulty, and the "Green" question has the least degree of difficulty, see col. 3, lines 36-40, and see claim 1, paragraph d) on col. 4, line 62 to col. 5, line10.

The only difference between Moore's questions, and the claimed "mathematical problems" resides in the meaning and information conveyed by **printed matter**. Such differences are considered unpatentable, *Ex parte Breslow*, 192 USPQ 431.

Furthermore or in the alternative, Moore discloses the claimed invention except for the "mathematical problems", example "2,1,4,3 = solution number 2", set forth in the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the questions on Moore's cards since it would only depend on the **intended use** of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate, it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of question or problem does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel or unobvious functional relationship between the claimed printed matter, e.g. "mathematical problems", example "2,1,4,3 = solution number 2", and the claimed substrate, e.g. cards, which is required for patentability.

Claim Rejections - 35 USC § 103

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of Peterson.

The patent to Peterson discloses a competitive game, comprising a deck of cards. One deck of cards has math questions-answer cards. The math problems have four skill levels, and each skill level may be color-coded, see col. 2, lines 17-30, and see

columns 3-6. Thus, Peterson teaches that it is known in the question-answer game art to provide math problems.

In view of such teaching, it would have been obvious to modify Moore's game by substituting for Moore's questions, math problems. This modification would have helped educate players in the subject of math.

Game Rules In Apparatus Claims

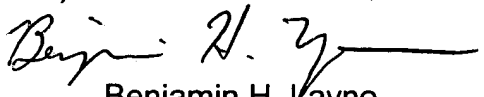
5. The preamble in claim 1 recites "A deck of cards". This recitation suggests that a game apparatus is being claimed. Thus, the Examiner is treating the claims as **apparatus claims**. The recitations "that require a single card to be simultaneously displayed to an unlimited number of players, the objective....." in claim 1, lines 5-9, and all the recitations in claims 2 and 3, are all considered game rules. In game apparatus claims, only the claimed elements having physical structure, (e.g. "deck of cards", "four fixed format mathematical problems", "color coded to indicate the skill level", etc.) are given patentable weight. Game rules, however, have no physical structure per se. Thus, **game rules have no limiting affect in game apparatus claims.**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Liddell, Begley et al, and Henry et al. disclose game comprising question and answer cards, each card having a plurality of questions, the questions on each card are labeled according to a particular skill level.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571)272-4415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl